The Authority of the Pretrial Institution in Testing the Validity of the Determination of a Suspect According to Criminal Procedure Law in Indonesia

Salman Paris Harahap[1], Bahar Elfudllatsani[1], Adhitia Pradana[1], Muhammad Ikhsan Lubis[1], Asti Inayah[1]

Faculty of Law, Universitas Jenderal Soedirman, Purwokerto, Indonesia
salman.paris@unsoed.ac.id

Abstract. The Constitutional Court (MK) issued Decision No. 21/PUU-XII/2014, which essentially added the scope of pretrial authority that had originally been set limitatively in Article 77 of the Criminal Procedure Code. The scope added by the Constitutional Court is about testing the validity of the status of a person's suspect determination. The problems in this study are how is the authority of investigators in determining suspects by investigators according to the Criminal Procedure Code in Indonesia and How is the testing of the validity of the determination of suspects through pretrial institutions according to the Criminal Procedure Code in Indonesia. The research used is normative juridical research. The approach used by the author in this research is the *statutory approach*. Pretrial is an effort made by the District Court to examine and decide on the validity of arrest, detention, termination of investigation, termination of prosecution, determination of suspects and decide on requests for compensation and rehabilitation where the criminal case is not submitted to the district court at the request of the suspect or defendant or his family and or legal counsel. The authority of the investigator in determining a suspect according to the Indonesian Criminal Procedure Code is that the investigator to determine a person to be a suspect must have sufficient preliminary evidence, namely at least 2 (two) types of evidence and determined through a case title.

Keywords: Authority, Criminal Procedure Law, Determination of Suspects, Pretrial

1. Introduction

As a state of law, Indonesia must be able to uphold human rights and guarantee all the rights of citizens who are equal before the law and government with no exceptions. This is emphasized in Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which reads: "Sovereignty is in the hands of the people and is exercised according to the Constitution".

As a state of law, Indonesia must place all citizens equally in the eyes of the law.

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Equality before the law is dynamically interpreted to guarantee *access to justice* for all people regardless of background. Perception of the law is important in order to understand or not the law, and whether or not there is compliance with the law.[1] To uphold the material law, it is necessary to enforce the formal law which functions to maintain the material law. One of the important benefits of formal law is to limit law enforcement officials in exercising their authority and provide guidelines in exercising their authority in terms of investigations and investigations. One of the State's efforts to ensure the protection of human rights in terms of law enforcement is the existence of pretrial in the justice system in Indonesia.

Law enforcement officers in Indonesia must protect and protect the community in order to create a sense of security and justice. Law Number 2 of 2002 concerning the Police explains how the duties, functions and authority of police officers in the search for evidence in order to determine a suspect. However, in collecting this evidence, the principle of presumption of innocence must still be considered, which is regulated in the general explanation of the Criminal Procedure Code point 3 letter C and Article 8 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power where a person cannot be said to be guilty before a determination by the court, in this case relating to the principle of presumption of innocence.

Pretrial according to Article 1 point 10 of the Criminal Procedure Code, hereinafter referred to as KUHAP, is the authority of the District Court to examine and decide in accordance with the method regulated in this law, regarding: whether or not an arrest and or detention at the request of the suspect or his family or other parties on behalf of the suspect, whether or not the termination of investigation or termination of prosecution is valid for the sake of law and justice, and the request for compensation or rehabilitation by the suspect or his family or other parties on his behalf whose case is not submitted to the court. Regarding pretrial authority is contained in Article 77 which states that.

Pretrial is authorized to examine and decide on the legality of arrest, detention, termination of investigation or termination of prosecution, and on compensation and/or rehabilitation for a person whose criminal case is terminated at the investigation or prosecution level. Then on April 28, 2015, the Constitutional Court (MK) issued Decision No. 21/PUU-XII/2014, which essentially added the scope of pretrial authority that had originally been determined limitively in Article 77 of the Criminal Procedure Code. The scope added by the Constitutional Court was to test the validity of a person's suspect status. The expansion was then agreed by several judges who considered that the determination of a person's suspect status should be included in the pretrial authority for various reasons. Regarding the expansion of pretrial authority, it has certainly caused differences of opinion and views, especially among judges, because there are judges who reject pretrial claims regarding the validity of the determination of the status of a suspect, and there are even judges who do not consider the determination of the status of a suspect as an object of pretrial. This has resulted in uncertainty and differences in interpretation among judges regarding the determination of the status of a suspect.

Therefore, an explanation and solution to the problems that occurred after the expansion of the scope of pretrial authority carried out by the Constitutional Court with the issuance of Decision Number 21/PUU-XII/2014 is needed.

The scope of pretrial proceedings has actually been limited by Article 77 of the Criminal Procedure Code, but it turns out that legal developments in the last 5 (five) years have broken through these limits and even preceded the discussion of the Draft Criminal Procedure Code. The development of the law is a clear manifestation of the implementation of the responsive theory that describes the law as a means of responding to social provisions and community aspirations. Riki Prima as a Judge Judicial Burea Law said "The expansion of the scope of pretrial, especially regarding the determination of suspects, had begun prior to the issuance of Constitutional Court Decision No. 21/PUU-XII/2014. Pretrial practices related to the determination of suspects can be found initially in Decision Number: 38/Pid.Prap/2012/PN.Jkt.Sel.[2] The legal consideration is to link the validity or not of the determination of a suspect with detention as a forced effort then interpreted the meaning of sufficient evidence in the provisions of Article 21 paragraph (1) of the Criminal Procedure Code P against the provisions of Article 184 paragraph (1) so that the determination of a suspect is included as a pretrial object but regarding the termination of investigation as part of the determination of a suspect is considered not pretrial material.[2]

The next practice is known through Decision Number: 04/Pid.Prap/2015/PN.Jkt.Sel. In the consideration of the decision, the authority of the investigator was tested against the position of the suspect as a law enforcer or state administrator or neither. The verdict stated that the Investigation Order that named the Applicant as a suspect by the Respondent was invalid and not based on law, and therefore the stipulation had no binding force.

2. Problems

The problems in this research are:

a. How is the authority of investigators in determining suspects by investigators according to the Indonesian Criminal Procedure Code?
b. How is the validity of the determination of a suspect tested through the pretrial institution according to the Indonesian Criminal Procedure Code?

3. Methods

The research that the author uses is normative juridical research, this normative juridical research determines whether existing legal rules are in accordance with legal norms,

whether legal norms in the form of orders or prohibitions are in accordance with legal principles and whether a person's actions are in accordance with legal norms or legal principles. Normative juridical research is research that refers to the norms contained in laws and regulations and to the applicable law (positive law) as well as the norms that live in society.[3] The approach used by the author in this research is the *statutory approach*.

4. Discussion

4.1. The Authority of Investigators in Determining Suspects According to the Indonesian Criminal Procedure Code

Preliminary Evidence as a Basis for Investigators in Determining Suspects According to the Criminal Code

The definition of sufficient preliminary evidence based on the explanation of Article 17 of the Criminal Procedure Code, basically states that sufficient preliminary evidence is preliminary evidence to suspect a criminal offense in accordance with the provisions of Article 1 point 14 of the Criminal Procedure Code. Then, Article 1 point 14 of the Criminal Procedure Code states that a suspect is someone who, because of his actions or circumstances, based on preliminary evidence should be suspected of being a perpetrator of a criminal offense.

Practically, sufficient preliminary evidence in the formulation of Article 17 of the Criminal Procedure Code must be interpreted as "minimum evidence" in the form of evidence as referred to in Article 184 (1) of the Criminal Procedure Code, which can guarantee that the investigator will not be forced to stop the investigation of a person suspected of committing a criminal offense, after the person has been arrested.[4] Article 183 of the Criminal Procedure Code basically stipulates that the Judge shall not impose a sentence on a person unless he/she is convinced by at least two valid pieces of evidence that a criminal offense has actually occurred, and that the defendant is the one guilty of committing it.

According to the Chief of Police Decree No. SKEEP/04/I/1982, dated February 18, 1982, the definition of preliminary evidence is evidence that is information and data contained in two valid pieces of evidence, among others:

a. Police report;
b. BAP at the crime scene;
c. Investigation Report;
d. Witness or expert testimony; and

e. Evidence.

Meanwhile, according to the Joint Decree of the Supreme Court, the Attorney General's Office and the Chief of Police No. 08/KMA/1984, No. M .02-KP.10.06 of 1984, No. KEP-.076/J.A/3/1984 on Improving Coordination in Criminal Case Handling (Mahkejapol) and in the National Police Chief Regulation No. Pol. Skep/1205/IX/2000 on Guidelines for the Administration of Criminal Investigation where it is regulated that sufficient preliminary evidence is evidence to suspect a criminal offense by requiring at least one police report plus one valid piece of evidence as stipulated in Article184 of the Criminal Procedure Code.[5]

The legal evidence in the criminal justice system is regulated in Article 184 paragraph (1) KUHAP, namely:

a. Witness statement;
b. Expert testimony;
c. Letter;
d. Instructions; and
e. Defendant's statement.

The Authority of Investigators in Determining Suspects According to the Indonesian Criminal Procedure Code

The Indonesian National Police (Polri) is one part of the State government's function in the field of maintaining security and public order, or as a law enforcement officer. Furthermore, the duties and authorities of the National Police are regulated in Law of the Republic of Indonesia Number 2 of 2002 concerning the Indonesian National Police.

One of the duties of the National Police is to conduct investigations. In the investigation process, among the authorities of the Polri is that these officials have the authority that has been regulated in the Criminal Procedure Code so that they are authorized to take forced actions against anyone who in their opinion can be suspected of having committed a criminal offense.[6]

In Article 1 point 4 of the Criminal Procedure Code, an investigator is an official of the Indonesian National Police authorized by law to conduct investigations.

Although in everyday reality in society anyone can act as an investigator to investigate something, according to the provisions of the Criminal Procedure Code, the investigator is only a member of the National Police.

Article 4 of the Criminal Procedure Code generally stipulates that every officer of the Indonesian National Police is an investigator. This implies that all members of the Indonesian National Police without exception are investigators who are involved in investigative tasks, which in essence is one of the many tasks specified by the Criminal Procedure Code.

Law No. 8 of 1981, which is closely related to other tasks, namely as an overall effort of law enforcers, to make a perpetrator of a criminal act accountable for his behavior according to criminal law in front of a judge.[4]

Investigations carried out by police officers cannot be separated from the term Police itself. In the beginning, the term "police" came from the word "*polis"* in Greek which means city, then a group of *"polis"* was given the term *"politea"* which means the entire government of the city state. But at that time *"polis"* had a very broad meaning, namely the government that covered the entire city government including religious affairs or worship of the gods. After the birth of Christianity, religious affairs were separated.[7]

According to the provisions of Article 1 point 5 of the Criminal Procedure Code, what is meant by investigation is a series of investigator actions to seek and find an event suspected of being a criminal offense in order to determine whether or not an investigation can be carried out in accordance with the procedures regulated in the Law.

According to the provisions of Article 1 number 1 of the Criminal Procedure Code, what is meant by investigator is a State Police Officer of the Republic of Indonesia or certain civil servants who are specifically authorized by law to conduct investigations. According to the provisions of Article 1 point 2 of the Criminal Procedure Code, what is meant by investigation is a series of investigator actions in the case and according to the method regulated in this Law to seek and collect evidence that makes light of criminal acts that occur and to find the suspect.

According to the provisions of Article 1 number 3 of the Criminal Procedure Code, what is meant by an auxiliary investigator is an official of the Indonesian National Police who, due to certain powers, can carry out investigative tasks regulated in the Law (Criminal Procedure Code).

Article 1 point 14 of the Criminal Procedure Code states "A suspect is a person who because of his actions or circumstances based on preliminary evidence should be suspected of being a perpetrator of a criminal offense". At this stage a person is determined as a suspect based on preliminary evidence obtained from the results of an investigation conducted by the police. So that based on this preliminary evidence, a person should be suspected of being a perpetrator of a criminal offense. So, it can be concluded that investigators to determine a person to be a suspect must have sufficient preliminary evidence, namely at least 2 (two) types of evidence and determined through a case title.

4.2. Testing the Validity of Suspect Determination Through Pretrial Institution According to the Indonesian Criminal Procedure Code

The Authority of Pretrial Institution in Indonesia

The best effort to enforce material criminal law always requires and relies on how the regulation of formal criminal law provisions is able to become a guardian in framing the spirit and purpose of material criminal law itself. One of the guardian frames in law

enforcement in Indonesia that aims to protect justice in the public criminal justice system is the pretrial facility available in the Criminal Procedure Code.

The demand for justice is part of the legal ideals of a state of law. Meanwhile, the right to protection of human rights is a right inherent in every human being that must be protected and maintained and respected by a state, especially for a state of law. Human rights are rights that are inherent in the individual person, and this right is the most basic right for every individual to stand and live independently in society, nation and state.[8] One of the principles derived from human rights is the rights of suspects in the criminal justice process, namely the right to be considered innocent before being proven guilty. This principle is commonly referred to as the presumption of innocence, which means that law enforcement is in line with the principle of equality before the law as stipulated in Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

The presumption of innocence is basically a manifestation of the modern criminal justice function which takes over the violence or revenge attitude of an institution appointed by the State. Thus, all rights violations committed by a person must be resolved in accordance with applicable legal procedures[9].

For the sake of upholding the law and as the highest form of respect for human rights, human rights become the foundation of the law, especially in the establishment of pretrial institutions. In the Criminal Procedure Code, the legal basis of pretrial institution is regulated in Law of the Republic of Indonesia Number 8 of 1981 listed in Article 1 point 10, Chapter X Part One from Article 77 to Article 83.

The legal basis for pretrial is also regulated in Article 9 of Law No. 48/2009 on Judicial Power, namely:

a. A person who is arrested, detained, charged or tried without justification under the law or because of a mistake as to his person or the law applied, shall have the right to claim compensation and rehabilitation;

b. Any official who intentionally commits an act as referred to in paragraph (1) shall be punishable; and

c. Provisions regarding the procedures for claiming compensation, rehabilitation and the imposition of compensation shall be further regulated by law.

According to the Big Indonesian Dictionary (KBBI) quoted by Kamal Hidjaz in his book, explains that the word authority is equated with the word authority, which is defined as the right and power to act, the power to make decisions, order and delegate responsibilities to other people / agencies.[10] Authority is the right to use the authority possessed by an official or institution according to applicable regulations. Thus, authority also concerns the competence of legal actions that can be carried out according to formal methods, so authority is a formal power possessed by an official or institution. Authority has an important position in the study of constitutional law and state administrative law. So important is the position of this authority that F.A.M. Stroink and J.G. Steenbeek call it the core concept in constitutional law and state administrative law.

[11]

Based on Law Number 8 of 1981 concerning the Criminal Procedure Code (before the Constitutional Court Decision Number 21/PUUXII/2014), pretrial itself based on Article 1 point 10, is the authority of the district court to examine and decide about:[12]

a. Whether or not an arrest and or detention is lawful at the request of the suspect or his family or other parties on behalf of the suspect;

b. Whether or not the termination of investigation or the termination of prosecution is valid upon request for the sake of law and justice; and

c. Request for compensation or rehabilitation by the suspect or his family or other parties by his attorney whose case is not submitted to the court.

What has been formulated in Article 1 point 10 of the Criminal Procedure Code is emphasized in Article 77 letter a of the Criminal Procedure Code which states that the District Court is authorized to examine and decide, in accordance with the provisions stipulated in this Law on:

a. Whether or not an arrest, detention, termination of investigation or termination of prosecution is valid; and

b. Compensation and/or rehabilitation for a person whose criminal case is terminated at the investigation or prosecution level.

If in Article 77 letter a of the Criminal Procedure Code the pretrial authority is only limited to the validity or not of arrest, detention and termination of investigation or prosecution, in the Constitutional Court Decision on April 28, 2015, expanded the object of pretrial claims through Decision Number 21/PUU-XII/2014 regarding "whether or not the determination of a suspect" because the Criminal Procedure Code cannot provide checks and balances against investigators' actions that are not in accordance with applicable regulations. Basically no one wants to be named a suspect even though he has committed an act that violates the law. To be able to obtain evidence in a criminal offense, where a person who commits a criminal.

Offense is first determined to be a suspect so that the investigator can obtain evidence to strengthen the status of the suspect. The decision of the Constitutional Court gives more authority to the pretrial regarding the amount of evidence to be able to determine a person as a suspect must be based on sufficient preliminary evidence. The Constitutional Court's decision allows suspects to file charges against law enforcers who act contrary to the law during the investigation process. This is certainly expected to create law enforcement efforts that still pay attention to human rights.[13]

Law enforcement is an effort to express the moral image contained in the law. The moral image contained in the law can be enforced through law enforcement officials.[14] Regarding pretrial as a forum for law enforcement in Indonesia, P.A.F. Lamintang and Theo Lamintang stated that pretrial is an effort regulated by the Criminal

Procedure Code as a guarantee for the protection of human rights, legal uncertainty and justice can be implemented as aspired.[4]

The decision of the Constitutional Court on April 28, 2015 has expanded the authority of pretrial itself, and added the "object of pretrial" which previously included the validity or invalidity of arrest, detention, termination of investigation, or termination of prosecution, is now expanded to include examining and deciding on the validity or invalidity of the determination of a suspect, the validity or invalidity of a search, and the validity or invalidity of a seizure.[15]

Testing the Validity of Suspect Determination Through Pretrial Institution According to the Indonesian Criminal Procedure Code

Pretrial is an effort made by the District Court to examine and decide on the validity of arrest, detention, termination of investigation, termination of prosecution, determination of suspects and decide on requests for compensation, and rehabilitation where the criminal case is not submitted to the district court at the request of the suspect or defendant or his family and or legal counsel. Pretrial is the authority possessed by the District Court to be able to examine and decide on a pretrial application in accordance with Article 1 point 10 of the Criminal Procedure Code.[13] Regarding the definition of a suspect, it is written in Article 1 paragraph (14) of the Criminal Procedure Code, which reads: "A suspect is someone who, because of his actions or circumstances, based on preliminary evidence, should be considered as a perpetrator of a criminal offense".

Lilik Mulyadi interpreted more broadly and straightforwardly the definition of a suspect is a person because the facts or circumstances indicate that he should be suspected of being guilty of a criminal offense.[22] The definition of sufficient preliminary evidence according to the elucidation of Article 17 of the Criminal Procedure Code is preliminary evidence to suspect a criminal offense in accordance with Article 1 paragraph (14). Article 17 of the Criminal Procedure Code indicates that arrest orders cannot be made arbitrarily but are directed at those who have actually committed a criminal offense.

The Criminal Procedure Code formulates several rights for suspects, namely:

a. The suspect's right to immediate examination (Article 50 of the Criminal Procedure Code);
b. The right to a defense (Article 51 to Article 57 of the Criminal Procedure Code);
c. Rights of Suspects who are in Detention; and
d. The right to seek redress and rehabilitation.

Article 77 paragraph (1) letter a of the Criminal Procedure Code does not explicitly mention confiscation and search, but only mentions arrest, detention, and

termination of investigation or prosecution, these details are not "limitative". However, Article 82 paragraph (3) letter d of the Criminal Procedure Code includes the forced seizure within the jurisdiction of the court. Substantive of pretrial. In such cases, the owner of the goods must be given the right to challenge the invalidity of the seizure in pretrial proceedings. Closing or negating the rights of the aggrieved person in the seizure in question, means allowing and justifying the rape of rights by law enforcement officials (investigators) against the property rights of innocent people.

Therefore, a pre-trial decision, even if it covers the legality of a termination of investigation or prosecution, is not a final decision, although it can be appealed. The final decision on such matters lies with the District Court. Therefore, whatever is decided by the pretrial is unique, specific and has its own character, because here the Judge only has the duty and authority as a means of horizontal supervision for the sake of fair and correct law enforcement.[16]Thus, the existence and presence of pretrial is not a separate judicial institution but only the granting of new authority and new functions delegated by KUHAP to each District Court, as an additional function and authority to the existing authority and function of the district court.[16]

Mechanism of Testing and Examination of Suspect Determination in Pretrial Hearing in Indonesia

The pretrial hearing examination begins with an examination of administrative completeness. The examination in a pretrial hearing is only a formal matter of an action taken by an investigator or public prosecutor. There are several procedures in filing a pretrial lawsuit, namely:[13]

a. Filing a Pre-Trial Petition

The pretrial application is addressed to the head of the District Court covering the jurisdiction. In filing a pretrial *petition, the petition* must contain a complete statement containing the name, address, occupation, and other personal data, material requirements containing the basic reasons and legal basis *(fundamentum petendi/ posita)* which describes and describes in advance the events of the case as well as the reasons based on the law that are used as the basis for filing a claim or request to be decided by the pretrial judge. In filing a pretrial lawsuit, it must be considered who the parties can file. The parties that can file are:[13]

1) The suspect, his family or his attorney

Suspects who can file a pretrial are suspects who are wrongly arrested, wrongly detained, which is a *human error* during the investigation process by the investigator. The family in question is a family with *vertical and horizontal* relationships that can be proven formally with the suspect. while the attorney is a person who gets power of attorney from the suspect or his family to submit a pretrial application.

2) Public prosecutor or interested third party

Article 80 of the Criminal Procedure Code gives the public prosecutor and interested third parties the right to request a hearing on the legality of the investigator's termination of investigation.

3) Investigators or interested third parties

Investigators or interested third parties may submit a request to examine the legality of the termination of prosecution by the public prosecutor.

b. Application for Registration in Pretrial Cases.

After the pretrial application is received by the court clerk, it will be immediately registered in the pretrial case which is separated from ordinary criminal cases. The court clerk is a leading element in charge of recording the minutes of the trial from the start of the trial process until the decision requires work intelligence in administrative arrangements, both administrations carried out manually and with a computerized system.[13]

c. The President of the District Court Appoints Judges and Clerks.

The president of the district court is responsible for the administration of cases within the court, the president of the court must supervise the administration of justice in his jurisdiction, the president of the court appoints a judge to preside over the judicial process of a case, the president of the district court hands over the administration to the clerk so that the pretrial examination process can run well, the appointment of judges is made immediately after the application is received, because the pretrial application must have a decision within 7 (seven) days. The pretrial hearing is presided over by a single judge.

The pre-trial hearing examination program is:[13]

1) Determination of Trial Day and Period of Pretrial Hearing Pretrial hearings are basically conducted in a fast-paced manner. Within 3 (three) days after the application is received, the judge must set the day and date of the hearing. of the trial. At the day determination trial the judge will deliver summonses to the parties who are respondents and petitioners.

2) Trial Procedure

The examination in a pretrial hearing is not only against the applicant but also against the investigator in the police or the public prosecutor depending on the contents of the petition submitted. The pretrial process is similar to the examination of a civil case, in which the applicant is the plaintiff and the respondent is the defendant. In the pretrial hearing there are several stages of examination, namely, examination of the power of attorney and reading the contents of the submitted petition, summoning witnesses and examining the evidence submitted in the hearing of the petition. The judge will then hear testimony from the applicant or respondent in order to consider giving a decision on the pretrial application.

3) Pretrial Court Decision

The form of pretrial decision is quite simple without reducing the content of clear considerations based on the law and the law. The form of pretrial decision is almost similar to a volunteer decision in civil procedure, the pretrial decision is also declaratory in nature which contains a statement about the validity or invalidity of the arrest, detention search or seizure. Pretrial decisions are not made specifically but are recorded in the official report as stipulated in Article 203 paragraph (3) letter d of the Criminal Procedure Code. Meanwhile, the content of the pretrial decision is as stipulated in Article 82 paragraph (2) and paragraph (3). In addition to containing the basic reasons for legal considerations by the judge, the pretrial decision must also contain an order. [13]

5. Conclusion

Pretrial is an effort made by the district court to examine and decide on the validity of arrest, detention, termination of investigation, termination of prosecution, determination of suspects and decide on requests for compensation and rehabilitation where the criminal case is not submitted to the district court at the request of the suspect or defendant or his family and or legal counsel. Pretrial is the authority possessed by the District Court to be able to examine and decide on a pretrial application in accordance with Article 1 point 10 of the Criminal Procedure Code. The authority of the investigator in determining a suspect according to the Criminal Procedure Code in Indonesia is that the investigator to determine a person to be a suspect must have sufficient preliminary evidence, namely at least 2 (two) types of evidence and determined through a case title. In the examination of the pretrial hearing begins with an administrative completeness check. The examination in a pretrial hearing is only a formal matter of an action taken by an investigator or public prosecutor. There are several procedures in filing a pretrial lawsuit, namely: filing a pretrial application, application for registration in a pretrial case and pretrial court decision.

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